

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

HEALTH CHOICE GROUP, LLC,

Plaintiffs/Relator,

v.

BAYER CORPORATION, *et al.*,

Defendants.

Civil Action No.: 5:17-CV-126-RWS-CMC

Civil Action No.: 5:17-CV-123-RWS-CMC

**NOTICE OF SUPPLEMENTAL  
AUTHORITY**

HEALTH CHOICE ALLIANCE, LLC,

Plaintiffs/Relator,

v.

ELI LILLY AND COMPANY, INC., *et al.*,

Defendants.

Relators respectfully file this Notice to advise the Court that, in an action filed by an affiliate of Relators in the U.S. District Court for the Southern District of Illinois, *United States of America ex rel. CHIMZNHCA, LLC v. UCB, Inc.*, No. 3:17-cv-00765-SMY-DGW, the District Court denied a motion to dismiss filed by the government.

In its *CHIMZNHCA* motion to dismiss, which mirrored almost verbatim the motions the government filed in the above-captioned cases, the government argued that dismissal was appropriate because “[h]aving completed its investigation, and finding the allegations to lack sufficient merit to justify the cost of investigation and prosecution and otherwise to be contrary

to the public interest, the United States now seeks to dismiss the relator's FCA claims." Exhibit A at 1-2. *Compare Lilly MTD* (D.I. 192) at 1-2 (same); *Bayer MTD* (D.I. 116) at 1-2 (same).

Furthermore, the government made the exact same representations it made to this Court concerning the scope and nature of its investigation. *See* Exhibit A at 14 ("As an initial matter, based on its extensive investigation of all of the various Venari Partners complaints, the government has concluded that the relators' allegations lack sufficient factual and legal support. Collectively, the government's investigations included, among other things, the collection and review of tens of thousands documents from the defendants and third parties and interviews of numerous witnesses, including prescribing physicians. The government also has had extensive discussions with the relators' counsel and has reviewed various information that they have provided. In addition, the government has consulted with subject-matter experts at HHS-OIG about the relators' allegations and the applicability of regulatory safe harbors and government-issued industry guidance."). *Compare Lilly MTD* at 14-15 (same); *Bayer MTD* at 14-15 (same).

Judge Staci M. Yandle denied the government's motion. In particular, Judge Yandle (i) rejected the *Swift* "unfettered discretion" standard of review; and (ii) under the *Sequoia Orange* standard of review, concluded that the government's showing in support of dismissal "falls short of a minimally adequate investigation to support the claimed governmental purpose." Exhibit B at 5-6.

Judge Yandle found it particularly noteworthy that, as it did in these cases, "the Government devoted a significant portion of its briefing – 6 ½ pages and all exhibits – to deriding the relator's business model and litigation activities," and concluded that "the Government's decision to dismiss this action is arbitrary and capricious, and as such, not rationally related to a valid governmental purpose." *Id.* at 6-7.

Dated: April 16, 2019

Respectfully submitted,

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***ATTORNEYS FOR RELATORS***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 16, 2019 to counsel of record who are deemed to have consented to electronic services via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail, facsimile, U.S. Mail and/or overnight delivery.

/s/ Radu A. Lelutiu  
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